

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE  
FIFTH SET OF INFORMATION REQUESTS FROM THE D.T.E.  
D. T. E. 05-27

Date: June 22, 2005

Responsible: Stephen H. Bryant, President

DTE-5-30 Refer to Exh. BSG/SHB-1, at 51, In. 18-22. Please provide a cite to where the Department made the determination that Bay State's integrated service business is not a competitive affiliate.

Response: Attachment DTE-05-30 (a) is a Letter Order dated June 15, 2000 to Bay State ("Bay State Order") affirming that a proposal offered by Bay State to address the Department's concerns regarding cross-subsidization and impediments to the development of a competitive marketplace was consistent with the objectives the Department outlined in its letter dated October 20, 1999. The Department's position was further clarified in a Letter Order ("Order") to Commonwealth Gas Company ("Commonwealth Order") dated September 12, 2001. See Attachment DTE-05-30 (b). In the Commonwealth Order the Department declined to find that Commonwealth's appliance maintenance and repair function was subject to the Standards of Conduct as an affiliate under 220 C.M.R. § 12.02. The Department relied on Commonwealth's claim that its appliance maintenance and repair function was consistent with the Bay State proposal as approved by the Department in the Bay State Order:

As the Company notes, however, the Department proposed the separation for Bay State as a means to prevent any possible cross-subsidization and avoiding impediments to the development of a competitive marketplace (Answer at 6). The Company further states that its practices conform to Bay State's practices, which the Department favorably endorsed (Answer at 6)."

The net result of these two Orders is that the Department does not view Bay State's integrated service business as a competitive affiliate.



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF  
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June 15, 2000

John A. DeTore, Esquire  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110-3319

RE: Bay State Gas Company's Service Business

Dear Mr. DeTore:

This letter responds to Bay State Gas Company's ("Bay State" or "Company") proposal to the Department of Telecommunications and Energy ("Department") regarding its service business. Bay State's proposal, incorporated in a letter dated April 14, 2000 to the Department, is intended to address the Department's concerns regarding cross-subsidization and impediments to the development of a competitive marketplace.

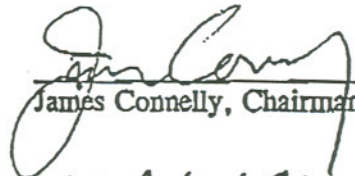
Specifically, Bay State proposes to track all costs and revenues associated with its service business and assign them on a fully allocated basis to allay concerns about potential cross-subsidization. In addition, Bay State will pursue contractor participation programs to address concerns about potential undue competitive advantage that Bay State may have in terms of access to service business customers. In particular, when customers call for service, Bay State will inform these customers that independent contractors also provide the same service; Bay State will provide the names of these contractors over the phone.

Bay State's proposal as stated in its April 14, 2000 letter is consistent with the objectives the Department outlined in its letter dated October 20, 1999. Scrupulous

John A. DeTore, Esquire  
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adherence to the practices outlined in Bay State's April 14, 2000 letter will address and allay the Department's concerns regarding cross-subsidization and impediments to the development of a competitive market place. We appreciate your, Mr. Cencini's, and the Company and its union personnel's efforts to resolve our concerns.

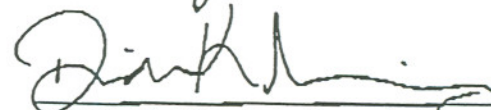
Sincerely,

  
James Connelly, Chairman

  
W. Robert Keating, Commissioner

  
Paul B. Vasington, Commissioner

  
Eugene A. Sullivan, Commissioner

  
Deirdre K. Manning, Commissioner





COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

Attachment DTE-5-30(b)  
DTE 05-27  
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**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY**

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AND BUSINESS REGULATION

September 12, 2001

**JAMES CONNELLY**  
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**W. ROBERT KEATING**  
COMMISSIONER  
**EUGENE J. SULLIVAN, JR.**  
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**PAUL B. VASINGTON**  
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RE: Correspondence from Manuel Chaves, dated February 9, 2000, D.T.E. 00-77

Dear Sirs:

This letter responds to the correspondence dated February 9, 2000 from Mr. Manuel Chaves to the Department of Telecommunications and Energy ("Department") regarding Commonwealth Gas Company ("Commonwealth Gas" or "Company").<sup>1</sup> In his letter, Mr. Chaves requests that the Department review the Company's practices regarding its appliance maintenance and repair service and determine whether the Company's practices comply with the Standards of Conduct for Distribution Companies and their Affiliates, 220 C.M.R. § 12.00 et seq. ("Standards of Conduct"). Later, on May 25, 2000, Mr. Chaves filed a memorandum ("Memorandum") in support of his letter. The Company answered on July 27, 2000 and responded to the Department's information requests on October 18, 2000.

Mr. Chaves complains that the Company promotes its appliance maintenance and repair service through inserts in monthly bills and through a recorded telephone greeting, which directs callers to the Company's sales and service departments. Mr. Chaves argues that the

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<sup>1</sup> Effective March 26, 2001, Commonwealth Gas changed its name to NSTAR Gas Company.

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inserts and telephone greeting are improper because the Standards of Conduct, including and specifically 220 C.M.R. § 12.03(12), prohibit a distribution company such as Commonwealth Gas from promoting any product or service of an affiliate.

Mr. Chaves' argument is premised on the Company's appliance maintenance and repair function being an affiliate as defined by 220 C.M.R. § 12.02. Mr. Chaves notes that the 220 C.M.R. § 12.02 defines the term affiliate as follows:

any "affiliated company," as defined in M.G.L c. 164, § 85, or any unit or division within a Distribution Company or its parent, or any separate legal entity either owned any unit or division within a Distribution Company or its parent, or any separate legal entity either owned or subject to the common control of the Distribution Company or its parent.

Mr. Chaves insists that the Company's appliance maintenance and repair service is an affiliate because it is a unit or division within the Company (Memorandum at 5 n.2 citing 220 C.M.R. § 12.02). Both Mr. Chaves and the Company agree, however, that Commonwealth Gas maintains appliance maintenance and repair service on a fully integrated basis with its utility operations (Memorandum at 8; Answer at 2). We note that, since a fully integrated service lacks any separation, either legal or functional, from the distribution company's obligations as a utility to its customers, it cannot be a unit or division within the definition of 220 CMR § 12.02. Therefore, the Company's appliance maintenance and repair service is not a unit or division within the definition of 220 CMR § 12.02. Because the appliance maintenance and repair function is not a unit or division, it is not an affiliate within the definition of 220 CMR § 12.02 and the Standards of Conduct do not apply.

Mr. Chaves, however, also requests that the Department expand the scope of the Standards of Conduct to include an integrated function, such as Commonwealth Gas' appliance maintenance and repair service (Memorandum at 10, 12-13 ). Mr. Chaves notes that the appliance maintenance and repair service is a competitive one, the costs of which he suggests probably have been or are being recovered through rates (Memorandum at 13). Mr. Chaves relies on the Department's October 20, 1999 letter ("October 20, 1999 Letter") to Bay State Gas Company ("Bay State") regarding its service business:

Bay State's proposal to remain, or to return to being, an integrated utility with respect to its service business is not consistent with the Department's stated goals. As an integrated utility supplying both monopoly and competitive services, it also gives Bay State an opportunity and, perhaps, incentive and ability to discriminate in the provision of monopoly services in favor of its own competitive services. . . . Separation will reduce the potential for inappropriate



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competitive advantage that Bay State might have by leveraging its monopoly services to its advantage in the otherwise competitive service business.

(Memorandum at 9 citing the October 20, 1999 Letter).

As the Company notes, however, the Department proposed the separation for Bay State as a means to prevent any possible cross-subsidization and impediments to the development of a competitive marketplace that may occur due to the integration of Bay State's service business with its regulated activities (Answer at 3). In response to the October 20, 1999 Letter, Bay State proposed to track costs and revenues for its service business on a fully allocated basis. Bay State also revised its contractor referral efforts to identify and contact all independent contractors that wish to be included in its referral list. By letter dated June 15, 2000, the Department found that Bay State's proposal was consistent with the objectives outlined in the October 20, 1999 Letter.

In the instant case, the Company claims that its practices are consistent with the Department's objectives of preventing possible cross-subsidization and avoiding impediments to the development of a competitive marketplace (Answer at 6). The Company further states that its practices conform to Bay State's practices, which the Department favorably endorsed (Answer at 6). Regarding cross-subsidization, the Company states that it accounts for costs and revenues of its appliance maintenance and repair function on a fully allocated basis (Answer at 6). Regarding impediments to the marketplace, the Company states that it currently informs customers of the availability of services from other vendors (Answer at 6; IR-DTE-1-1; IR-DTE-1-2).<sup>2</sup>

The Department agrees that the Company's statements regarding its current practices are consistent with the objectives outlined in the October 20, 1999 Letter. Bay State, however, provided the Department detailed documentation regarding its accounting mechanisms and customer referral practices. Only after reviewing the documentation did the Department conclude that the accounting mechanisms and customer referral practices ensured that there was no subsidy by distribution customers, favoritism, or preferential treatment. To date, the Department has not received such information from the Company. Therefore, the Department directs the Company to provide the appropriate documentation regarding its accounting methods and customer referral practices within 30 days of this letter.

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<sup>2</sup> For example, the Company states that in the circumstance where a Commonwealth Gas service technician has tagged gas equipment as unsafe and in need of immediate replacement, the technician provides the customer with a card identifying the appropriate classifications within the Yellow Pages that list vendors who could sell the needed equipment, thereby allowing the customer to choose from whom to purchase the equipment (IR-DTE-1-1; IR-DTE-1-2).

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In conclusion, the Department declines to find that the Company's appliance maintenance and repair function is subject to the Standards of Conduct as an affiliate under 220 C.M.R. § 12.02. The Company, however, must properly account for the costs and revenues from the appliance maintenance and repair function. The Department directs the Company to provide complete documentation regarding its accounting mechanisms and customer referral practices within 30 days.

By Order of the Department,

  
James Connelly, Chairman

  
W. Robert Keating, Commissioner

  
Paul B. Vasington, Commissioner

  
Eugene J. Sullivan, Jr., Commissioner

  
Deirdre K. Manning, Commissioner